89-725

Supreme Court, U.S.
FILED
SEP 29 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

---

LORNA L. NELSON,

Petitioner,

v.

PRN PRODUCTIONS, INC., ET AL.,

Respondents.

---

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

---

HERMAN H. BAINS
608 Second Avenue South
Suite No. 1010
Minneapolis, Minnesota 55402
(612) 339-0159
COUNSEL OF RECORD and
COUNSEL FOR PETITIONER

OF COUNSEL:

MARCIA BAINS-GREBNER
3621 Deerskin Road
Eagle River, Wisconsin 54521
(715) 479-9507

November 2, 1989

69 pp

## QUESTIONS PRESENTED

Section 106(3) of the 1976 Copyright Revision Act, Title 17, provides a copyright owner of an unpublished copyrighted work with the exclusive right of first publication. This exclusive right of first publication is limited by the fair use provisions of Section 107, as well as other provisions (Sections 108 - 117) of the Copyright Act. The Eighth Circuit Court of Appeals, in affirming the dismissal of petitioner's copyright infringement claim for lack of substantial similarity of the accused work with respect to petitioner's unpublished copyrighted work, refused to recognize and, therefore, rejected the existence of petitioner's right of first publication.

The questions presented are:

(1) Whether copyright infringement of an unpublished work requires a determination of whether the copyright owner's right of first publication has been violated, and

(2) If so, whether an infringing violation of the owner's right of first publication (of an unpublished work) must be determined under the fair use provisions of Section 107 of the 1976 Copyright Revision Act?

## LIST OF THE PARTIES

The parties to the proceedings below were petitioner, Lorna L. Nelson, and the respondents, Prince Rogers Nelson and PRN Productions, Inc. Duane Nelson and John L. Nelson were named as parties in the complaint, but were dismissed prior to the appeal to the federal court of appeals and are not named as parties herein.

The respondents before this Court include Prince Rogers Nelson and PRN Productions, Inc.[1]

---

[1] PRN Productions, Inc. has no parent companies, subsidiaries, or affiliates to list, pursuant to Rule 28.1, opinions below.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED . . . . . | i |
| LIST OF PARTIES . . . . . | iii |
| OPINIONS BELOW. . . . . | 1 |
| JURISDICTION. . . . . | 3 |
| STATUTES INVOLVED . . . . . | 5 |
| STATEMENT OF THE CASE . . . . . | 7 |
| REASONS FOR GRANTING THE WRIT . . . | 19 |
| The Eighth Circuit's refusal to recognize the right of first publication afforded a copyright owner of an unpublished work under 17 U.S.C. 106(3) conflicts with the decisions of this Court and other Circuits . . . . . | 19 |
| Purpose of the Use. . . . . | 29 |
| Nature of the Copyrighted Work. . . . . | 31 |
| Amount and Substantiality of the Portion Used . . . . . | 35 |
| Effect on the Market. . . . . | 38 |

Page

The Conflict with the Second Circuit Decisions . . . . 40

CONCLUSION. . . . . 49

## TABLE OF AUTHORITIES


| | Page |
|---|---|
| Cases: | |
| Hartman . . . . . v. Hallmark Cards, Inc. 833 F.2d 117 (8th Cir. 1987) | 34 |
| Harper & Row Publishers, Inc. . v. Nation Enterprises 471 U.S. 539 (1985) | 20,21,22, 23,24,25, 27,28,29, 31,32,35, 36,37,38, 41,42,46, 48 |
| Nelson. . . . . v. PRN Productions, Inc. 873 F.2d 1141 (8th Cir. 1989) | 2 |
| Nelson. . . . . v. PRN Productions, Inc. -- F.2d -- (8th Cir. 1989) (petition for rehearing en banc denied -- June 26, 1989) | 2 |
| New Era Publications Intern.. . v. Henry Holt & Co. 873 F.2d 576 (2nd Cir. 1989) | 41,43,45, 46,48 |

| | Page |
|---|---|
| Salinger. . . . . v. Random House, Inc. 811 F.2d 90 (2nd Cir. 1987) | 40,41,42, 43,45,46, 48 |
| Sony Corp. of America . . . . . v. Universal Studios, Inc. 464 U.S. 417 (1984) | 40 |
| Miscellaneous: | |
| (Statutes and Rules) | |
| 1976 Copyright Revision Act,. . Title 17 | i,ii,3, 19,20,47 |
| 17 U.S.C. 106 . . . . . | 5,7,19 |
| 17 U.S.C. 106(3). . . . . | i,14,24 |
| 17 U.S.C. 107 . . . . . | i,ii,5, 15,16,17, 21,22,24, 38,43,49 |
| 17 U.S.C. 108-117 . . . . . | i |
| 17 U.S.C. 501 . . . . . | 6 |
| 28 U.S.C. 1254(1) . . . . . | 4 |
| Rule 12(b)(6) FRCP. . . . . | 9 |

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

---

LORNA L. NELSON,

Petitioner,

v.

PRN PRODUCTIONS, INC., ET AL.,

Respondents.

---

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

---

The petitioner Lorna L. Nelson respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled proceedings on May 3, 1989.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 873 F.2d 1141, and is reprinted in the Appendix hereto, p. A-1, infra. The Order of the Court of Appeals for the Eighth Circuit, denying Appellant's petition for rehearing is reported at -- F.2d --, and is reprinted in the Appendix hereto, p. A-2, infra.

The Order of the United States District Court for the District of Minnesota, Fourth Division (Doty, D. J.) has not been reported. It is reprinted in the Appendix hereto, p. A-17, infra.

## JURISDICTION

Invoking federal jurisdiction under the 1976 Copyright Revision Act, Title 17, the petitioner brought this suit for copyright infringement in the Federal District Court for the District of Minnesota. On April 28, 1988, the Federal District Court granted respondents' motion to dismiss petitioner's copyright infringement claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. See p. A-17 infra.

On petitioner's appeal, the Eighth Circuit, on May 3, 1989, entered a judgment and an opinion affirming the District Court's order granting respondent's motion to dismiss. See p. A-2, infra. The petition for rehearing sought by petitioner

was denied on June 26, 1989. See p. A-1, infra.

The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

17 U.S.C. § 106. Exclusive rights in copyrighted works

> Subject to sections 107 through 118, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:
>
> . . .
>
> (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
>
> . . .

17 U.S.C. § 107. Limitations on exclusive rights: Fair use

> Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any

particular case is a fair use the factors to be considered shall include --

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. § 501. Infringement of copyright.

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright.

## STATEMENT OF THE CASE

Petitioner, a resident of Minneapolis, Minnesota, is the author and owner of an unpublished lyric for music entitled, "WHAT'S COOKING IN THIS BOOK". Petitioner complied with the relevant statutory registration procedure and obtained a Certificate of Copyright Registration for her unpublished work on October 20, 1986. See p. A-88, infra. There is no dispute that petitioner's copyrighted lyric is unpublished and is protected by 17 U.S.C. 106 from unauthorized reproduction.

Respondent Prince Rogers Nelson is a well-known recording artist, composer and performer of rhythm and blues music, and is the half-brother of petitioner. PRN Productions, Inc. is a corporation,

having a principal place of business at 7801 Audubon Road, Chanhassen, Minnesota 55317 and is engaged in the business of manufacturing, producing and distributing phonograph records featuring respondent Prince Nelson. PRN is the acronym of its owner, respondent Prince Rogers Nelson.

On August 12, 1987, petitioner instituted this action for copyright infringement against respondents, alleging that respondents' publication and distribution of phonograph records and tapes of the song "U GOT THE LOOK" infringed on petitioner's unpublished work "WHAT'S COOKING IN THIS BOOK". See p. A-41, infra. The complaint also contained other claims against respondents and against Duane

Nelson and John Nelson.[2] The other claims and the parties Duane Nelson and John Nelson were dismissed by stipulation of the parties and by the District Court and were not included in the appeal to the Eighth Circuit.

On November 27, 1987, respondents filed a motion to dismiss petitioner's copyright count, pursuant to Rule 12(b)(6) of the FRCP, on the grounds that it did not state a claim upon which relief could be granted because respondents' song "U GOT THE LOOK" was not substantially similar to petitioner's unpublished lyric, "WHAT'S COOKING IN THIS BOOK". In their

---

[2] Petitioner has included only the copyright count of the complaint in the appendix, since this is the only count involved in the appeal to the Eighth Circuit.

motion to dismiss, respondents admitted access to petitioner's unpublished work and also admitted petitioner's ownership of her copyrighted lyric.

In an affidavit filed in response to respondents' motion to dismiss, petitioner declared that she retained her unpublished lyric, "WHAT'S COOKING IN THIS BOOK", in confidence at her residence, and was unaware that respondents had obtained access to the lyric until this unexplained access was admitted in respondents' motion to dismiss. See p. A-49, infra. Petitioner also states in her affidavit that respondents' admitted but unauthorized access occurred without petitioner's permission and, therefore, constituted a purloined taking. Petitioner's affidavit stands uncontroverted.

Petitioner also filed an affidavit, executed by petitioner's counsel, for the purpose of showing the market effect resulting from the public distribution of the accused work, "U GOT THE LOOK". This uncontroverted affidavit and attachments (charts from various issues of the music trade journal "Billboard") demonstrate the commercially successful reception and artistic recognition of the accused work, "U GOT THE LOOK", by the purchasing public and the music industry. See pp. A-57 - A-87, infra.

The following pages (labeled "12a - 12dd") contain comparison charts of petitioner's lyric, "WHAT'S COOKING IN THIS BOOK", and respondents' lyric, "U GOT THE LOOK". An examination of these comparison charts demonstrates

that respondents' lyric contains expressions in literal and paraphrased form totalling more than 20% of the protected expressions of petitioner's unpublished lyric. The charts also demonstrate that respondents' lyric, "U GOT THE LOOK", contains protected expressions from petitioner's unpublished lyric totalling more than 30% of the accused lyric.

PLAINTIFF'S COPYRIGHTED

UNPUBLISHED, CONFIDENTIAL

LYRICS

WHAT'S COOKING IN THIS BOOK

Pick Me Up

Take A Look

Now Take Another Look

Before You Close This Book,

Open It,

There's More Love In Here

Than You'll Ever Know,

So Read Me Baby,

Take It Slow.

Let's Start At The Beginning Of Us,

A Monday Morn, Dark and Dreary,

I Was Feeling Sort of Teary,

Until I Glanced Up And Saw You,

A Smile So Pretty and New Foxy

Vivacious Were You.

As I Tried To Keep My Hands In Place,
Makeup Was Rolling Down My Face.
You Put Yours In Mine
And Said It Was Only A Matter of Time.

Something Kept Saying "What Is This,
    What Is This" In Front of Me,
There Was An Intense Feeling of Love
    Flowing Through Me,
And It Could Still Be.

So If There Is Anything Left To Us,
Don't Close This Book,
Read Me Baby, Take It Slow,
There's Too Much Love In Here
    For You To Blow.

And I Guarantee You'll Never

Take Another Look

When You Realize What's Cooking

In This Book

-- Realize What's Cooking

In This Book.

DEFENDANTS' ACCUSED

LYRICS -- ACCESS (PURLOINED

TAKING) ADMITTED

U GOT THE LOOK

U GOT THE LOOK

Here We Are Folks

The Dream We All Dream Of

Boy Versus Girl In The World

Series of Love

Tell Me, Have U Got the Look?

U Walked In, I Woke Up

I've Never Seen A Pretty Girl

Look So Tough, Baby

U Got That Look

Color U Peach and Black

Color Me Takin' Aback

Crucial, I Think I Wantcha

You've Got The Hook

U GOT THE LOOK (Continued)

U Sho'Nuf Do Be Cookin' In My Book
Your Face Is Jammin'
Your Body's Heck-A-Slammin'
If Love Is Good, Let's Get 2 Rammin'
U Got The Look
U Got The Look

U Must'A Took
A Whole Hour Just 2 Make Up Your
    Face, Baby
Closin' Time, Ugly Lights, Everybody's
    Inspected,
But U Are A Natural Beauty Unaffected
Did I Say An Hour?
My Face Is Red
I Stand Corrected
You've Got The Look,
    You've Got The Look.

U GOT THE LOOK (Continued)

U Sho'Nuf Do Be Cookin' In My Book
Your Face Is Jammin'
You're Body's Heck-A-Slammin'
If Love Is Good, Let's Get 2 Rammin'
U Got The Look, U Got The Look

Well Here We Are, Ladies and
    Gentlemen
The Dream We All Dream Of
Boy Versus Girl In The World
    Series of Love
Slammin'
U Walked In
I Woke Up
I Never Seen Such A Pretty Girl
    Look So Tough, Baby
U Got That Look, Yes You Do

Color U Peach And Black

Color Me Takin' Aback, Baby

Crucial, I Think I Wantcha

The first release or public distribution of respondents' song, "U GOT THE LOOK", was contained in respondents' album entitled, "SIGN 'O' THE TIMES". See pp. A-98 - A-101, infra. Since respondent Prince Nelson is designated as the composer of all the songs contained in the album, including the accused work, "U GOT THE LOOK", petitioner sought discovery by oral deposition of respondent Prince Nelson. Specifically, petitioner sought information explaining the admitted but unauthorized access and an explanation of the source of the expressions in respondents' song, "U GOT THE LOOK", which are identical to or a closely paraphrased form of the protected expressions in petitioner's lyric, "WHAT'S COOKING IN THIS BOOK".

Despite the fact that petitioner's

copyrighted lyric was unpublished, held in confidence, (access) illegally obtained, and despite the fact that respondents' lyric contains expressions corresponding to protected expressions in petitioner's lyrics totalling more than 30% of respondents' song, "U GOT THE LOOK", petitioner was denied all discovery with respect to her copyright infringement claim. See p. A-36, infra.

The District Court, in granting respondents' motion to dismiss, refused to recognize petitioner's right of first publication conferred upon an owner of an unpublished work by 17 U.S.C. 106(3), and, instead, found that the accused work was not substantially similar to the copyrighted work, based on a pure comparison of these works. See p. A-17, infra.

In rejecting petitioner's claim that

the question of copyright infringement of an unpublished work requires a determination of whether the copyright owner's right of first publication has been violated under the fair use provisions of 17 U.S.C. 107, the District Court completely discounted the crucial relevancy and criticality of the unpublished nature of the copyrighted work, the breach of petitioner's confidentiality, and the unauthorized access by stealth. See p. A-17, infra.[3]

---

[3] Although the order of the District Court merely refers to these critical facts as "the circumstances of this case" (See p. A-20, infra.), the exchange between the District Court and petitioner's counsel clearly discloses the unimportance the court attaches to the unpublished nature of the copyrighted work, the breach of petitioner's confidentiality, and the purloined taking of the copyrighted work. Petitioner has included in the appendix that portion of the hearing transcript embodying this exchange on pp. A-25 - A-35.

In due course, petitioner took an appeal to the Eighth Circuit from the order of the District Court dismissing petitioner's copyright count and the District Court's earlier order denying petitioner discovery with respect to her copyright claim. Petitioner urged the Eighth Circuit to hold that the dismissal of petitioner's copyright infringement claim constituted reversible judicial error because her copyright infringement claim had been dismissed for lack of substantial similarity based on a pure comparison of the copyrighted and accused works, rather than a determination of whether petitioner's right of first publication had been violated under the fair use provisions of 17 U.S.C. 107.

Instead of determining whether

respondents' appropriation of expressions from petitioner's unpublished lyric, "WHAT'S COOKING IN THIS BOOK", violated petitioner's right of first publication under the fair use provisions of 17 U.S.C. 107, the Eighth Circuit limited its review to a pure comparison of the accused and protected works. In affirming the District Court's decision that respondents' lyric, "U GOT THE LOOK", did not infringe petitioner's lyric for lack of similarity, the Eighth Circuit impliedly but unequivocably refused recognition of an author's right of first publication.

The final portion of the Eighth Circuit opinion is devoted to its review of whether the District Court abused its discretion by denying petitioner discovery with respect to the copyright infringement

count. In affirming the order denying this discovery as the exercise of sound discretion, the Eighth Circuit tacitly dismissed the relevance of the unpublished nature of petitioner's copyrighted work, the breach of petitioner's confidentiality, the admitted but illegal access, and the presence of expressions from petitioner's lyric totalling more than 30% of respondents' accused lyric. See p. A-15, infra. Accordingly, the Eighth Circuit affirmed the District Court's orders in all respects and dismissed petitioner's copyright infringement claim. See p. A-16, infra.

## REASONS FOR GRANTING THE WRIT

### The Eighth Circuit's refusal to recognize the right of first publication afforded a copyright owner of an unpublished work under 17 U.S.C. 106(3) conflicts with the decisions of this Court and other Circuits.

The Copyright Revision Act of 1976 (Title 17) involved a number of innovations and recognized for the first time a distinct statutory right of first publication afforded unpublished works under Clause (3) of Section 106. This right of first publication, like other rights enumerated in Section 106, is expressly made subject to the fair use provisions

of Section 107. Harper & Row v. Nation Enterprises, 471 U.S. 539, at 552 (1985). Under the 1976 Copyright Revision Act, a charge of infringement of an unpublished work compels a determination of whether a copyright owner's right of first publication has been violated subject to the fair use provisions of Section 107.

The Eighth Circuit's refusal to recognize petitioner's right of first publication in deciding the question of infringement of petitioner's unpublished lyric, "WHAT'S COOKING IN THIS BOOK", has, in effect, eviscerated this express statutory right from the Copyright Revision Act of 1976. This drastic treatment of the Copyright Act deserves this Court's attention.

This refusal to recognize the

statutory right of first publication by the Eighth Circuit in deciding the question of infringement of petitioner's unpublished work directly conflicts with this Court's decision in Harper & Row v. Nation Enterprises, 471 U.S. 539 (1985). Harper & Row held that, in appropriating protected expressions from the unpublished copyrighted work, "A TIME TO HEAL", Nation effectively arrogated to itself the right of first publication, and this violation of the right of first publication was not a fair use and, therefore, was an infringement. 471 U.S., at 549.

Like Harper & Row, this case involves a charge of copyright infringement of an unpublished work held in confidence and in which the admitted access was unauthorized. Although it was established in

Harper & Row that Nation had knowingly exploited the purloined manuscript, 471 U.S., at 563, petitioner's affidavit that respondents' admitted access to her unpublished lyric was illegal (purloined) stands unrebutted. See p. A-50, infra. While Harper & Row was decided after a full trial on the merits, in contrast to the dismissal of petitioner's copyright infringement claim on respondent's motion, this procedural difference does not appear to be significant on the issue of whether copyright infringement of an unpublished work requires a determination of whether the author's right of first publication has been violated under the fair use provisions of Section 107.

Even though the relevant and operative facts in Harper & Row and the instant

case are substantially identical, the Eighth Circuit nevertheless sought to distinguish Harper & Row from the instant case. Noting that "Nation Magazine argued that its admitted copying of a portion of the memoir constituted a 'fair use'", the Eighth Circuit observed that respondents "have not chosen to assert" fair use as a defense, but chose instead to challenge the accused infringement on the grounds of lack of substantial similarity. The Eighth Circuit then held that the issue of copyright infringement of peitioner's (unpublished) lyric could be and was properly decided on the basis of the substantial similarity test. See p. A-12, infra.

This distinction rests upon the premise that a charge of copyright infringement of an unpublished work

may be selectively challenged either under the substantial similarity test or under the fair use defense at the election of the accused infringer. By its logic, the Eighth Circuit does not observe the traditional (and statutory) distinction between fair use or infringement of published and unpublished works.

While the 1976 Copyright Act makes the right of first publication under Section 106(3) expressly subject to the fair use provisions of Section 107, this Court concluded that the Copyright Act reflects the intent of Congress to codify the common law doctrine of fair use. 471 U.S., at 549.

In recounting the evolution of the right of first publication, in Harper & Row, this Court noted that this right (of

first publication) was originally absolute under common law until he (the author) parted with the same, but this absolute rule was tempered in practice by the equitable nature of the fair use doctrine. 471 U.S., at 551. The Court added in words particularly relevant to the Eighth Circuit's refusal to recognize petitioner's right of first publication of her unpublished lyric,

> "Publication of an author's expression before he has authorized its dissemination seriously infringes the author's right to decide when and whether it will be made public, a factor not present in fair use of published works." (471 U.S., at 551).

Although Harper & Row is unequivocally clear in holding that a charge of infringement of an unpublished work compels a determination of whether the

author's right of first publication has been violated under the fair use provisions of Section 107, the Eighth Circuit's decision holds to the contrary. The Eighth Circuit decision stands for the proposition that one accused of copyright infringement of an unpublished work may vitiate the relevance of the unpublished nature of the work and avoid a consideration of the author's right of first publication by simply challenging the accused infringement with the defense of lack of substantial similarity.

Under its decision, the Eighth Circuit has tacitly concluded that the right of first publication is not a right vested in the author of an unpublished work at the time the work is created, but apparently is an illusory right, which comes

into existence if, and only if, an accused infringer asserts the fair use defense. Under the Eighth Circuit decision, a clever tactician defending against a charge of copyright infringement involving an unpublished work may effectively destroy the author's right of first publication through the agency of the election of defenses.

The totality of the conflict between Harper & Row and the instant case can be readily seen from the comparison charts on the following pages (labeled "28a - 28cc"). The comparison charts not only compare the relevant operative facts in Harper & Row with those of the instant case, but also compare Harper & Row with the instant case in an analysis under the fair use factors of Section 107.

The comparison charts clearly demonstrate the striking identity of relevant facts between Harper & Row and the instant case. While the judicial procedure followed in Harper & Row and the instant case is decidedly different, this difference merely underscores the confusion of the Eighth Circuit about an author's right of first publication and the defense of fair use as it relates to unpublished works. The completeness of the conflict between Harper & Row and the instant case is more clearly demonstrated by the comparison of Harper & Row and the instant case under the fair use factors of Section 107. A comparison of the facts for each factor will be addressed separately.

LORNA L. NELSON

v. PRN PRODUCTIONS, ET AL.

Copyrighted Work

Copyright Registration - lyric

Unpublished

Access unauthorized

Held in confidence

Access was admitted

Purloined taking - unrebutted

Court Procedures and Disposition

District Court -- Denied Petitioner discovery

-- Granted Respondent's Motion to dismiss - Lack of substantial similarity

Eighth Circuit -- Affirmed District Court

LORNA L. NELSON

v. PRN PRODUCTIONS, ET AL.

Purpose of Accused Work

Production and distribution of musical recordings for profit

Accused work - lyric with music in a record, tape, or video

Unfair use?

Nature of Copyrighted Work

Unpublished lyric for rhythm & blues music

"WHAT'S COOKING IN THIS BOOK"

(176 words)

Style - Lyrical verse

Unfair Use?

LORNA L. NELSON

v. PRN PRODUCTIONS, ET AL.

Amount of Copying

Accused work ("U GOT THE LOOK") -

-- 242 words

-- Respondents appropriated 20% of copyrighted work

-- Respondents' work - contains 30% of protected expressions

Unfair Use?

Market Effect

Accused work was highly commercially successful

Unfair Use?

## HARPER & ROW PUBLISHERS

## v. NATION ENTERPRISES

### Copyrighted Work

Copyright Registration - book

Unpublished

Access unauthorized

Held in confidence

Access was admitted

Knowing use of Purloined work

### Court Procedures and Disposition

District Court -- Found Unfair Use and Infringement

Second Circuit -- Reversed - Found Fair Use

U.S. Supreme Court -- Reversed - Found Unfair Use

HARPER & ROW PUBLISHERS

v. NATION ENTERPRISES

Purpose of Accused Work

News reporting

for profit

Accused work - newsworthy article

in The Nation magazine

Unfair Use!

Nature of Copyrighted Work

Unpublished memoirs (book) of former

President Gerald Ford

"A TIME TO HEAL"

(655 pages)

Style - Factual narrative

Unfair Use!

HARPER & ROW PUBLISHERS

v. NATION ENTERPRISES

Amount of Copying

Accused work - ("THE FORD MEMOIRS - BEHIND THE NIXON PARDON") -

-- 300 words out of 200,000

-- Nation appropriated less than 1% of copyrighted work

-- Nation article contained 13% of protected expressions

Unfair Use!

Market Effect

Clear demonstration of actual damage ($12,500) from infringement

Unfair Use!

Purpose of the Use

Harper & Row held that the purpose of Nation's use of the unpublished work was unfair because: (a) although the general purpose of this use was news reporting, Nation went beyond simply reporting uncopyrightable information and sought to exploit the headline value of its infringement by making a news event of its unauthorized first publication of the copyrighted expression, 471 U.S., at 561; (b) the use was commercial, as opposed to a non-profit use and the commercial use of copyrighted material presumptively is an unfair exploitation of the monopoly privilege that belongs to the owner of the copyright, 471 U.S., at 562; and (c) that Nation could not offer up even the fiction of consent as

justification of its use because Nation had knowingly exploited a purloined manuscript, 471 U.S., at 563.

In the instant case, the only purpose of respondent's production and distribution of the accused work, "U GOT THE LOOK", which appropriated petitioner's protected expressions, was to generate profits. The denigration of the relevance of the impropriety of respondent's behavior in purloining petitioner's unpublished work, "WHAT'S COOKING IN THIS BOOK", tacitly affirmed by the Eighth Circuit, is best reflected in the District Court's statements:

> "I mean I don't see my role as determining whether there is thievery. . . . That it is the role of the court to now see, for the purposes of copyright infringement, as to whether there was infringement, not whether there was a purloining

of the lyrics.". See pp. A-24 - A-35, infra.

The Eighth Circuit's total disregard for respondents' crass commercialization of petitioner's protected expressions in the accused work, "U GOT THE LOOK", after respondents purloined petitioner's unpublished work, serves only to underscore the complete conflict under this fair use factor between Harper & Row and the Eighth Circuit's decision.

Nature of the Copyrighted Work

Harper & Row holds that the unpublished character of a work is a critical element of its nature, and further holds that the scope of fair use is narrower with respect to unpublished works. 471 U.S., at 564.

In concluding that Nation's use was

unfair, this Court noted:

> "While even substantial quotations might qualify as fair use in a review of published work for a news account of a speech that had been delivered to the public or disseminated to the press, (see House Report, at 65), the author's right to control the first public appearance of this expression weighs against such use of the work before its release. Right of first publication encompasses not only the choice of whether to publish at all, but also the choices of when, where, and in what form first to publish a work.". 471 U.S., at 564.

Harper & Row emphasizes the criticality of the unpublished nature of a copyrighted work and its (unpublished nature) impact on the copyright owner's right of first publication, while the Eighth Circuit decision completely disregarded the unpublished nature of petitioner's copyrighted lyric and refused

to recognize petitioner's right of first publication.

Despite the fact that the sole issue presented to the Eighth Circuit on appeal involved the issue of infringement of petitioner's unpublished lyric and petitioner's right of first publication, the Eighth Circuit failed to even mention the expressions "unpublished" and the author's "right of first publication" in its decision. The Eighth Circuit's justification for its decision rests upon the fact that respondents did not raise the defense of fair use, and, therefore (the Court apparently concluded), there was no need to consider the unpublished nature of petitioner's lyric and her right of first publication. See p. A-11, infra.

After disregarding the unpublished

nature of petitioner's copyrighted lyric and her right of first publication, the Eighth Circuit cited and relied on Hartman v. Hallmark Cards, Inc., 833 F.2d 117 (8th Cir. 1987) as controlling the question of infringement before it on appeal. However, the issue of copyright infringement in Hartman v. Hallmark Cards did not involve an accused infringement of an unpublished work or the copyright owner's right of first publication, but involved an accused infringement of a published work where the substantial similarity test was the appropriate standard to be applied.

Even though the sole substantive issue presented to the Eighth Circuit was whether respondent's appropriation of protected expressions from petitioner's

unpublished copyrighted work, "WHAT'S COOKING IN THIS BOOK", violated petitioner's right of first publication, the Eight Circuit decision totally discounted the critical relevance of the unpublished nature of petitioner's lyric and refused to recognize petitioner's right of first publication. The Eighth Circuit decision is not only logically unexplainable, but the conflict with Harper & Row could not be more complete under this fair use factor.

Amount and Substantiality
of the Portion Used

In Harper & Row, noting that Nation appropriated an insubstantial portion (substantially less than 1% of the copyrighted work as a whole), this Court concluded that Nation took essentially the

heart of the book. 471 U.S., at 565. By way of contrast, respondents have appropriated in excess of twenty percent (20%) of petitioner's unpublished lyric and have structured seven of the eight verses of the accused work, "U GOT THE LOOK", around literal or paraphrased expressions taken from petitioner's copyrighted lyric. See the comparison charts, supra, pp. 28a - 28cc.

In Harper & Row, the direct takings from the unpublished manuscript constituted at least thirteen percent (13%) of the infringing article, 471 U.S., at 505, while the protected expressions taken from petitioner's work constitute in excess of 30% of the accused work, "U GOT THE LOOK". Although the quantitative appropriation in the instant case

exceeds the quantitative taking in Harper & Row by orders of magnitude, the qualitative taking in the instant case (the structuring of seven of eight verses in the accused work with appropriated expressions) is at least as great as the qualitative taking (heart of the book) in Harper & Row.

Finally, in Harper & Row, the protected work was a factual historical narrative, while in the instant case, peitioner's unpublished copyrighted work is a lyric having a rhyme scheme, a work of fantasy. As this Court noted, in Harper & Row, "The law generally recognizes a greater need to disseminate factual works than works of fiction or fantasy.". 471 U.S., at 539. While there is greater appropriation of

protected expressions by the accused infringer in the instant case than in Harper & Row, there is also a greater need to protect petitioner's poetic lyric than the need to protect a historical factual narrative. The Eighth Circuit decision offers no explanation or even the semblance of a justification for the unauthorized appropriation of protected expressions by respondents from petitioner's unpublished poetic lyric.

Effect on the Market

Although petitioner has been severely handicapped by the denial of discovery, the evidence of record, which was discounted by the Eighth Circuit, indirectly establishes that the market effect of the accused infringement weighs against respondents. In Harper & Row, this Court found

direct evidence of damage, resulting from the infringement. 471 U.S., at 567. In the instant case, the accused work, "U GOT THE LOOK", enjoyed substantial commercial success and was the only one of twelve (12) songs in the album, "SIGN 'O' THE TIMES" ("U GOT THE LOOK" was released in the album "SIGN 'O' THE TIMES"), which was nominated for a Grammy Award. See Bains' Affidavit and attachments, pp. A57 - A87, infra.

While the undeniable commercial and artistic success of the accused work, "U GOT THE LOOK", is only indirect evidence of the market effect of the accused infringement, this Court noted that, ". . . to negate fair use, one need only show that, if the challenged use 'should become widespread, it would adversely

affect the potential market for the copyrighted work'.", 471 U.S., at 568, citing Sony Corp. of America v. Universal Studios, Inc., 464 U.S., at 451 (emphasis added); id., at 484, and no. 36 (collecting cases) (dissenting opinion). The nationwide commercial success and the artistic recognition (Grammy Award nomination) of the accused work is a strong indication of the widespread use of petitioner's unpublished expressions by respondents, thereby adversely affecting the market potential of the protected work.

## The Conflict with the Second Circuit Decisions

Equally in conflict with the Eighth Circuit decision below is Salinger v. Random House, Inc., 811 F.2d 90 (2nd Cir.

1987) and New Era Publications Intern. v. Henry Holt & Co., 873 F.2d 576 (2nd Cir. 1989).

In Salinger v. Random House, J. D. Salinger, a well-known author, sought to enjoin publication of Salinger's biography, based on the alleged misappropriation by the accused infringers of expressions from Salinger's unpublished copyrighted letters. Salinger's charge of infringement was resisted by the accused biographers on the grounds that they had made a fair use of the unpublished letters. The Second Circuit, in finding that the use by Random House was unfair, scrupulously followed this Court's approach in Harper & Row and concluded, "We place special emphasis on the unpublished nature of Salinger's

letters and proceed to consider each of the four statutory fair use factors.". 811 F.2d, at 96.

In Salinger v. Random House, Inc., the Second Circuit construed this Court's observation (in Harper & Row) that the scope of fair use is narrower with respect to unpublished works in its conclusion:

> "However, we think that the tenor of the Court's entire discussion of unpublished works conveys the idea that such works normally enjoy complete protection against copying any protected expression. Narrower 'scope' seems to refer to the diminished likelihood that copying will be fair use when the copyrighted material is unpublished.". 811 F.2d, at 97.

The Second Circuit found that the purpose of the unpublished letters was fair, since "[T]he book may be considered "criticism', 'scholarship', and 'research'". 811 F.2d, at 96. See

17 U.S.C. Section 107. However, the Second Circuit then found that, "[S]ince the copyrighted letters are unpublished, the second factor weighs heavily in favor of Salinger.". 811 F.2d, at 97. The Second Circuit also found that the amount of substantiality of the portion used by Random House, even in paraphrased form, was unfair. 811 F.2d, at 98, 99. The proportional amount and the quality of the material appropriated in Salinger v. Random House corresponds to the quantity and quality appropriated in the instant case. Finally, the Second Circuit found that the potential effect on the market weighed in favor of Salinger. 811 F.2d, at 99.

In New Era Publications Intern. v. Henry Holt & Co., supra, the copyright

owners sought to enjoin publication of the biography of L. Ron Hubbard, founder of the Church of Scientology, based on the alleged misappropriations by the accused infringers of expressions from Hubbard's unpublished copyrighted diaries. The Second Circuit, in its fair use analysis, found that the purpose of the use by the accused biographers was fair because the book could be classified as a work of criticism, scholarship, or research. 873 F.2d, at 583.

However, the Second Circuit found the remaining fair use factors in New Era to be unfair. Specifically, the Second Circuit found "[W]here use is made of materials 'of an unpublished nature', the second fair use factor is yet to be applied in favor of an

infringer, and we do not do so here.". 873 F.2d, at 583.

The Second Circuit in New Era also found that the amount of material appropriated by the accused infringer was unfair, even though the Second Circuit characterized the amount of material used as being more than "small". 873 F.2d, at 584. The proportional amount and quality of the material appropriated from the unpublished diaries appears to be substantially less than the material appropriated in the instant case. Finally, the Second Circuit in New Era also found that there was some impairment of the market and the market effect, as it was, therefore, deemed to be unfair. 873 F.2d, at 583.

In Salinger v. Random House and in

New Era Publications Intern. v. Henry Holt & Co., the Second Circuit, in following Harper & Row, stressed the criticality of the relevance of the unpublished nature of Salinger's letters and Hubbard's diaries, the copyright owner's right to control first publication, and the requirement of the fair use defense in resisting a charge of infringement of an unpublished copyrighted work.

In the instant case, the Eighth Circuit has totally discounted the relevance of the unpublished nature of petitioner's copyrighted lyric, refused to recognize petitioner's right of first publication, and has rejected petitioner's contention that Salinger v. Random House, New Era Publications v. Henry Holt & Co., and Harper & Row v. Nation Enterprises,

require a determination of infringement under the fair use provisions of Section 107 when the copyrighted work is unpublished.

The Eighth Circuit's confusion about the right of first publication conferred upon the author of an unpublished work under the 1976 Copyright Revision Act is found in the precedents cited in the opinion below. See pp. A-7 - A-13, infra. All of those involved infringement issues of published copyrighted works or involved decisions decided under the earlier Copyright Law (preceding the 1976 Copyright Revision Act), which did not expressly recognize the right of first publication for unpublished works.

The Eighth Circuit decision is in

complete conflict with the decisions of the Second Circuit in Salinger v. Random House and New Era Publications v. Henry Holt & Co. The Eighth Circuit has, therefore, created a confusing precedent, likely to generate even further confusion among the Circuits. It is a precedent directly at odds with this Court's ruling in Harper & Row. Plenary consideration of the matter by this Court is essential.

## CONCLUSION

For these various reasons, the petition for certiorari should be granted. If petitioner is correct in urging that the Eighth Circuit should have decided that the question of infringement of petitioner's unpublished lyric, "WHAT'S COOKING IN THIS BOOK", requires a determination of whether petitioner's right of first publication had been violated under the fair use provisions of 17 U.S.C. 107, the matter should be remanded to the District Court for appropriate disposition, after a full development of the facts concerning the unauthorized use by respondents of petitioner's

protected expressions.

Respectfully submitted,

HERMAN H. BAINS
608 Second Avenue South
Suite No. 1010
Minneapolis, Minnesota 55402
(612) 339-0159
COUNSEL OF RECORD and
COUNSEL FOR PETITIONER

OF COUNSEL:

MARCIA BAINS-GREBNER
3621 Deerskin Road
Eagle River, Wisconsin 54521
(715) 479-9507

October 31, 1989

89-725

Supreme Court, U.S.
FILED
SEP. 20, 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

---

LORNA L. NELSON,

Petitioner,

v.

PRN PRODUCTIONS, INC., ET AL.,

Respondents.

---

# APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---

HERMAN H. BAINS
608 Second Avenue South
Suite No. 1010
Minneapolis, Minnesota 55402
(612) 339-0159
COUNSEL OF RECORD and
COUNSEL FOR PETITIONER

OF COUNSEL:

MARCIA BAINS-GREBNER
3621 Deerskin Road
Eagle River, Wisconsin 54521
(715) 479-9507

November 2, 1989

## TABLE OF CONTENTS


Page

PROCEDURAL DOCUMENTS

Decision of Eighth Circuit Court of Appeals on Appellant's Petition for Rehearing En Banc. . . . . .A-1

Decision of Eighth Circuit Court of Appeals on Oral Argument. . . . . .A-2

Decision of United States District Court, District of Minnesota, Fourth Division . . . . .A-17

Excerpts of Transcripts from Hearings in the United States District Court, District of Minnesota, Fourth Division . . . . .A-24

Order of United States District Court, District of Minnesota, Fourth Division (denying discovery). . . . . .A-36

Original Complaint (Count I -- pages 1 - 4). . . . . .A-41

## TABLE OF CONTENTS

Page

EXHIBITS

Affidavit of Lorna L. Nelson . . . .A-49

Affidavit of Herman H. Bains and Charts from Billboard magazine, illustrating position, sales, radio play lists, airplay, dance club play lists, etc. of popular commercial records and albums; and, in particular, the album "SIGN 'O' THE TIMES" and the single "U GOT THE LOOK", for the months of March, 1987 to December, 1987. . . . . .A-57

Certificate of Copyright Registration "WHAT'S COOKING IN THIS BOOK". . . . . .A-88

Cover from "SIGN 'O' THE TIMES" Album and lyrics for "U GOT THE LOOK". . . . . .A-98

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-5193MN

| | | |
|---|---|---|
| Lorna L. Nelson, | * | |
| | * | |
| Appellant, | * | Order Denying Petition |
| | * | for Rehearing and |
| vs. | * | Suggestion for |
| | * | Rehearing En Banc |
| PRN Productions, | * | |
| Inc., et al, | * | |
| | * | |
| Appellees. | * | |

The suggestion for rehearing en banc filed by appellant Lorna L. Nelson has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc.

Petition for rehearing by the panel is also denied.

June 26, 1989

Order entered at Direction of the Court:

/s/ Robert D. St. Vrain

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

---

88-5193

---

| | | |
|---|---|---|
| Lorna L. Nelson, Plaintiff-Appellant, | * | |
| v. | * | Appeal from the United States District Court for the District of Minnesota. |
| PRN Productions, Inc., Prince Rogers Nelson, John L. Nelson, and Duane J. Nelson, Defendants-Appellees. | * | |

---

Submitted: March 17, 1989

Filed: May 3, 1989

---

Before FAGG and BEAM, Circuit Judges, and GUNN,* District Judge.

---

* The Honorable George F. Gunn, Jr., United States District Judge for the Eastern District of Missouri, sitting by designation.

GUNN, District Judge

Lorna L. Nelson brought this cause in the District Court of Minnesota against her half-brother, Prince Rogers Nelson; her brother, Duane J. Nelson; her father, John L. Nelson; and PRN Productions, Inc. Prince Rogers Nelson performs under the single cognomen, "Prince," and is a well-known recording artist, performer, and songwriter of rock music. PRN is a corporation with its principal place of business in Chanhassen, Minnesota and engaged in the business of manufacturing, producing, and distributing phonograph records featuring Prince. John Nelson and Duane Nelson are believed to be employees either of Prince or of PRN.

Count I of the complaint alleges that the song, "U Got the Look," manufactured, produced and distributed by PRN and Prince,

constituted an infringement of Lorna's copyrighted work, "What's Cooking in This Book," in violation of federal copyright law. A second count was for an accounting under state law for compensation John received from Prince and PRN for the use of lyrics Lorna allegedly co-authored. The district judge[1] granted defendants' motion to dismiss Count I based on his determination that no substantial similarity existed between Lorna's lyrics and the allegedly infringing lyrics. The court dismissed Count II for lack of jurisdiction. Lorna did not appeal from this latter ruling. The district court denied Lorna's request to take Prince's deposition pending its ruling on the

---

[1] The Honorable David S. Doty, United States District Judge for the District of Minnesota.

motion to dismiss.

The issues before the court on appeal are: (1) Whether the district court erred in its determination that no copyright infringement occurred, and, (2) whether the district court abused its discretion in denying appellant's discovery requests. Because the Court finds the district court acted properly on both issues, we affirm.

The Copyright Claim

17 U.S.C. §106[2] sets forth the exclusive entitlements granted to the holder of a copyright. Sections 107 through 118

---

[2] The full text of 17 U.S.C. §106 is as follows:

> §106. Exclusive rights in copyrighted works.
>
> Subject to sections 107 through 118, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

provide exceptions to the exclusive entitlements. Section 501 establishes a cause of action against "anyone who violates any of the exclusive rights of

---

> (1) to reproduce the copyrighted work in copies or phonorecords;
>
> (2) to prepare derivative works based upon the copyrighted work;
>
> (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
>
> (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
>
> (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

the copyright owner as provided by sections 106 through 118 * * * ." 17 U.S.C. §501(a).

To establish a violation of section 106, the plaintiff must show:

1. Plaintiff's ownership of the allegedly infringed work; and

2. Defendant's "copying" of the copyrighted work.

Knickerbocker Toy Co. v. Agrak-Hamway Internat'l., 668 F.2d 699, 702 (2d Cir. 1982); Walker v. University Books, 602 F.2d 859,862 (9th Cir. 1979); see also 3 M. Nimmer, Nimmer on Copyright §13.01 at 13-3 (1981). Copying may be proven either by direct evidence or by demonstrating circumstantial evidence establishing "access and 'substantial similarity' of the two works." Knickerbocker Toy Co., 668 F.2d at 702, quoting Novelty

Textile Mills, Inc. v. Joan Fabrics Corp., 558 F.2d 1090 (2nd Cir. 1977).

In this case, defendants have stipulated to plaintiff's ownership of a valid copyright and to defendant's access to plaintiff's song.[3] Thus, the only element in dispute is substantial similarity.

The two lyrics were appended to plaintiff's complaint and to her appellate brief. Lorna's copyrighted lyric, "What's Cooking In This Book," is 35 lines long, arranged in six verses, and comprised of 176 words. Prince's lyric, "U Got the Look" is approximately 47 lines long, arranged in eight verses, and comprised of 242 words.

---

[3] Where the similarity between the original and the copy is so striking as to preclude any possibility of independent creation, access may be inferred. Ferguson v. National Broadcasting Co., 584 F.2d 111, 113 (5th Cir. 1978).

Specifically, the alleged infringing portions are as follows:

| Lorna's lyric | Prince's lyric |
| --- | --- |
| Verse Two<br>I glanced up and saw you,<br>a smile so pretty. | Verses Two and Seven<br>I woke up, I've never seen<br>such a pretty girl. |
| Verse Three<br>Makeup was rolling down my face | Verse Five<br>A whole hour just to make up your face |
| Verse Six<br>What's cooking in this book,<br>what's cooking in this book | Verses Four and Six<br>U sho 'nuf do be cooking in my book |
| Verses One and Six<br>Take a look<br>Take another look | Verses One and Seven<br>U got the look |

Plantiff attempts to analogize her case to Harper & Row Publishers v. Nation Enterprises, 471 U.S. 539 (1985). But that case is infelicitous here. In Harper & Row, a portion of a soon-to-be published memoir appeared verbatim in The Nation

Magazine with defendants neither taking issue with the validity of plaintiff's copyright nor with the allegation that they copied a portion of plaintiff's work verbatim. Therefore, instead of challenging the strength of Harper & Row's prima facie case, The Nation Magazine argued that its admitted copying of a portion of the memoir constituted a "fair use".

In this case plaintiff contends that the district court erroneously directed its attention exclusively to the issue of substantial similarity instead of inquiring as to whether "the use" of plaintiff's work was a Harper & Row "fair use." But plaintiff's contention in this regard is simply an attempt to side-step the necessity of proving infringement by raising and then dismantling a

defense which the defendants have not chosen to assert. Defendants have not applied "fair use" as a defense, and the trial court therefore correctly declined to discuss the application of that doctrine. Instead, it properly addressed the issue of substantial similarity.

Hartman v. Hallmark Cards, Inc., 833 F.2d 117, 120 (8th Cir. 1987), incites the law in this Circuit pertaining to substantial similarity:

> Determination of substantial similarity involves a two-step analysis. There must be substantial similarity 'not only of the general ideas but of the expressions of those ideas as well.' First, similarity of ideas is analyzed extrinsically, focusing on objective similarities in the details of the works. Second, if there is substantial similarity in ideas, similarity of expression is evaluated using an intrinsic test depending on the response of the ordinary, reasonable person to the forms of expression.

Id.

The District Court had before it here complete copies of both Lorna's song and Prince's and was therefore in proper position to apply the substantial similarity test.

This Court held in Hartman that where both works are in the record, the trial court has sufficient evidence upon which to enter summary judgment. The second step of the substantial similarity analysis does not call for "analytical dissection" or "expert opinion." Rather, "substantial similarity of expression is measured by . . . the response of the ordinary, reasonable person." Id. The so-called extrinsic test has been said not to depend upon the trier of fact, therefore, but on such objective criteria as "the type of artwork involved,

the materials used, the subject matter, and the setting for the subject." Sid & Marty Krofft Television Prods., Inc. v. McDonald's Corp., 562 F.2d 1157, 1164 (9th Cir. 1977). The District Court was capable of making this determination. Hartman, 833 F.2d at 120.

In this case, the trial court carefully studied the lyrics involved and determined that reasonable minds could not differ as to the absence of substantial similarity. The trial judge could properly determine the matter of substantial similarity as a matter of law and did so by granting defendants' motion to dismiss the copyright count on the ground that it failed to state a claim for infringing use. On review, this Court cannot conclude that a mistake has been committed by such ruling.

Discovery

Plaintiff also alleges that the trial court abused its discretion by refusing to allow her further discovery. That is not so.

Plaintiff proposed, primarily, to take Prince's deposition. She asserts that she would have sought to discover facts bearing upon the availability of the fair use defense and whether PRN and Prince would admit or deny copying any of the expressions in plaintiff's lyric.

In discovery matters, the trial court has wide discretion. The determination of what constitutes relevant information rests with the sound discretion of the trial court. This Court has already noted that defendants never advanced fair use as a defense. Rather, they refute plaintiff's claim that

defendants copied her song on the basis of an absence of substantial similarity. Thus, this Court cannot find that the court below abused its discretion in denying plaintiff's requests for discovery designed to refute a defense defendants did not raise.

Similarly, because defendants did admit ownership and access, the Court finds plaintiff's alleged interest in whether defendants would admit copying to be totally irrelevant. Had defendants admitted copying, they would have admitted plaintiff's case. Clearly, defendants denied copying on the basis that no substantial similarity existed between plaintiff's and defendants' lyrics. Therefore, this purported basis for further discovery on plaintiff's behalf also lacks merit. The district court cannot

be said to have abused its discretion in denying discovery on this basis.

Conclusion

For all of the foregoing reasons, we find that the district court properly granted defendants' motion to dismiss and denied plaintiff's discovery motions. Accordingly, the judgment of the District Court is hereby affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

| | | |
|---|---|---|
| Lorna L. Nelson, Plaintiff, | ) | Civil No. 4-87-722 |
| v. | ) | ORDER |
| PRN Productions, Inc., Prince Rogers Nelson, John L. Nelson, and Duane J. Nelson, Defendants. | ) | |

Herman H. Bains, Esq., 608 Second Avenue South, Suite 1010, Minneapolis, MN 55402, appeared on behalf of the plaintiff.

Jerry W. Snider, Esq. and Faegre & Benson, 2300 Multifoods Tower, 33 South Sixth Street, Minneapolis, MN 55402, appeared on behalf of the defendants.

This action for copyright infringement

FILED 4-28-88

JUDGMENT ENTERED _____

is before the Court upon defendants' motion to dismiss Count I and Count II of the Complaint. Defendants base their motion on Count I on the lack of substantial similarity between plaintiff's and defendant's lyrics. Assuming Count I is dismissed, defendants argue that Count II must be dismissed for lack of subject matter jurisdiction.

DISCUSSION

I. Copyright Infringement

Count I of plaintiff's Complaint alleges that her lyrics "WHAT's COOKING IN THIS BOOK" is registered for copyright and that defendants PRN Productions and Prince Rogers Nelson have released a record entitled "U GOT THE LOOK" which infringes on her lyrics in violation of the Copyright Act.

To establish copyright infringement,

the plaintiff must establish that defendant copied work in which plaintiff owned a valid copyright. Copying may be inferred from evidence that the defendant had access to the copyrighted work and that substantial similarities exist as to the protectible material in the two works. Walker v. Time Life Films, Inc., 784 F.2d 44, 48 (2nd Cir. 1986). For purposes of this motion, defendants have conceded that the Complaint sufficiently alleges plaintiff's ownership of the registered copyright in the lyrics "WHAT'S COOKING IN THIS BOOK" and defendants' access to the lyrics. Defendants contend, however, that the Complaint, which incorporates plaintiff's and Prince's lyrics, does not sufficiently allege substantial similarity.

Plaintiff has responded that a

comparison of the lyrics for the purpose of determining whether they are substantially similar is inappropriate at this time. Rather, plaintiff's contend that analysis under the "fair use" doctrine is required by the circumstances of this case and that, under a fair use analysis, this action may not be dismissed.

The fair use doctrine is a defense that may be raised as a justification for the use of copyrighted material when such use would otherwise constitute infringement. See Harper & Row Publishers v. Nation Enterprises, 471 U.S. 539, 548 (1985). Therefore, before this Court may analyze this case under the fair use doctrine there must have been a use of plaintiff's lyrics "WHAT'S COOKING IN THIS BOOK" that would constitute an infringement of her copyright. Defendants,

however, have not raised the fair use doctrine as a defense. Instead, they contend that the fair use doctrine is inapplicable because there is no substantial similarity between plaintiff's and defendant's works and, therefore, no infringement.

Based upon a review of the two works, the Court agrees with the defendants contention that no reasonable trier of fact, comparing the works as a whole, would consider Prince's work so similar to plaintiff's that the factfinder would conclude that the defendant unlawfully appropriated plaintiff's work. See Walker, 784 F.2d at 48; Atari, Inc. v. North American Philips Consumer Electronics Corp., 672 F.2d 607, 614 (7th Cir. 1982), cert. denied, 459 U.S. 880 (1982). Therefore, Count I of plaintiff's Complaint must be dismissed.

II. Accounting

Count II of plaintiff's Complaint seeks an accounting from John L. Nelson for compensation he received from Prince Rogers Nelson and PRN Productions, Inc. for the use of lyrics John L. Nelson allegedly co-authored with Lorna Nelson. As alleged, plaintiff's claim for an accounting arises under state law. Although plaintiff requested leave to amend Count II to state a federal cause of action by seeking a declaratory judgment that John L. Nelson co-authored the lyrics at issue in Count II, Magistrate Boline has denied that request. Because Count II arises under state law and because the Court has dismissed Count I, plaintiff's only claim arising under federal law, Count II will be dismissed without prejudice. Stokes v. Lokken,

644 F.2d 779, 785 (8th Cir. 1981).

Accordingly, IT IS HEREBY ORDERED that defendants' motion to dismiss Counts I and II of the Complaint is granted.

Dated: April 27, 1988

/s/ David S. Doty

David S. Doty, Judge
United States District Court

LET JUDGMENT BE ENTERED.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Lorna L. Nelson, CASE NO.: 4-87-722

Plaintiff,

vs. DATE: April 7, 1988

PRN Productions,

INC.; Prince Rogers

Nelson; John L.

Nelson; Duane J.

Nelson,

Defendants. MINNEAPOLIS, MN

TRANSCRIPT OF PROCEEDINGS

BEFORE U. S. DISTRICT JUDGE DAVID S. DOTY

APPEARANCES:

For Plaintiff: HERMAN H. BAINS and

MARCIA BAINES-GREBNER

For Defendant: JERRY W. SNIDER

THE COURT: I wouldn't put either of you in to that position.

MR. BAINS: Well --

THE COURT: I hope you don't try. But I think both have a good argument from what I can see.

MR. BAINS: Right.

I think that one of the things the court is going to have to grapple with is that this copyrighted work is unpublished.

And that either matters or it doesn't matter.

The court also has to take into consideration that plaintiff kept her work in confidence at her apartment.

You have to also consider that the access was unauthorized.

She authorized no one to take it, to use it, or to show it to someone else.

And that either matters, or it doesn't matter, in the court's determination.

And the court has to determine -- if those facts are true, and they do matter -- whether the plaintiff's right of first publication has been destroyed by this taking.

Now I am not sure what Mr. Snider just said, but I think he said that they claim they did not use it.

Now when they resisted our motion for discovery, as I recollect it, they said, "Whether we admit to using it, or not using it, is not relevant".

At least that is what I understood them to say.

Now as I stand here today, it apparently seems that it does matter whether they will admit to using it or not using

it.

They are saying today they didn't use it.

Now I don't know where that places the court, after not having allowed us to make discovery on that point.

THE COURT: As I understood it then -- and I think I still understand it; and I want to make it clear so that you understand where I am coming from -- what I understand the plaintiff is saying is that it is irrelevant --

MR. SNIDER: (Nods head up and down)

THE COURT: -- the legal point is irrelevant because he's saying that they didn't use it, but that is not relevant for the court's consideration --

MR. SNIDER: (Nods head up and down)

THE COURT: -- what is relevant for the court's consideration is a pure comparison; that the court ought to look at whether the accused lyrics in fact infringe; and that under Mr. Snider's theory that the no use doctrine is really not important; what it is, is a -- well, it's a no-use doctrine, but I've got to make what he calls the ordinary-observer test.

And if I sit here as an ordinary observer -- and I suspect that when it comes to rock lyrics I am maybe not terribly ordinary because I am not familiar with them -- but at least I can look at the words.

And then I look at the words and compare them.

And if they have any kind of comparison, then we can find infringement.

And if they don't, they don't.

MR. BAINS: I guess this is where I depart from him, and where I think the court -- I don't know whether that's what you're saying your function is.

But before you get to this, the only factual context in which you make this so-called comparison has to be done in the factual context that plaintiff's work was unpublished, it was held in confidence, and -- as far as we are concerned -- it was stolen.

She didn't authorize anybody to take it.

And it was used to produce a commercial hit that was a smash hit.

So that --

THE COURT: Let me ask you a question, Mr. Bains.

MR. BAINS: Sure.

THE COURT: Is it your interpretation of the law, that the court must determine first that there was some purloining of the lyrics?

I mean I don't see my role as determining whether there was thievery here.

It is my understanding of my role to determine, whatever the access was -- and I think for this motion, as I understand it, Mr. Snider is saying his client admits access, for purposes of argument, if nothing else --

MR. SNIDER: (Nods head up and down)

THE COURT: They are not getting into the whole idea of where it came from, how it got there.

They say they had access to it.

And so that, in other words, they

saw it.

And he is just admitting that for purposes of this argument.

MR. SNIDER: (Nods head up and down)

THE COURT: But he's saying that even if there was access -- and I suspect he would say legal or illegal -- that it is the role of the court to now see, for purposes of this copyright infringement, as to whether there was an infringement.

Not whether there was purloining of the lyrics.

MR. BAINS: Now I don't think that is the law at all.

I think if you read -- we say one case controls this whole thing; and that is Harper and Roe versus Nations.

Let me tell you about that case.

The copyrighted work was the

manuscript of President Ford.

He cut a deal with Harper and Roe and Reader's Digest to publish it.

And they cut a deal with Time magazine to serialize it.

He apparently delievered the manuscript to them.

And the infringer found out about it, and took it.

And the Supreme Court said, "Look: As to infringement, the court has to consider whether the use is fair."

They say that because the work was unpublished.

A copyright owner has the right of first publication, whether to publish or not publish.

That is the critical thing.

That has a lot to do with the nature of the work.

If you run then to the question of whether they are substantially similar, then the court can make the comparison in the way they do in a conventional copyright case.

Where the work is out there, it's either been voluntarily given to the defendants, or it's been published, and plaintiff's rights are not diminished one bit.

But here we have an unpublished work. Plaintiff hadn't decided whether she wanted to publish it or not.

Somehow they got it.

She kept it in confidence.

And when you come to this point of making this comparison, whether it was published or unpublished, it is critical that, if it's unpublished, you just don't say whether they are substantially similar.

You say whether the use was fair.

And in the Jerry Ford case the manuscript was 655 pages long.

They copied phrases, from the 655 page manuscript, that amounted to one page -- if you put it all together.

And they said it was unfair.

And they said it was unfair because it was unpublished, it was held in confidence, and somehow the defendants gained unauthorized access.

That is what the court has to do.

That is the way the court has to look at this case when you are making this comparison.

That is the only thing that you can do, I think.

THE COURT: Are you saying or suggesting that the only inquiry, that the court has, is to determine whether

there's been unfair use?

MR. BAINS: That is -- absolutely.

THE COURT: Okay. And how does the court go about that, other than by looking at and making a comparison -- just as you are suggesting; right? --

MR. BAINS: The statute has a fair use provision.

THE COURT: Right.

MR. BAINS: And it instructs the trier of fact and law to make 4 factual inquiries.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

| | | |
|---|---|---|
| Lorna L. Nelson, Plaintiff, | ) | Civil No. 4-87-722 |
| v. | ) | ORDER |
| PRN Productions, Inc., Prince Rogers Nelson, John L. Nelson, and Duane J. Nelson, Defendants. | ) | |

Herman H. Bains, Esq., 608 Second Avenue South, Suite 1010, Minneapolis, MN 55402, for plaintiff.

Calvin L. Litsey, Esq. and Faegre & Benson, 2300 Multifoods Tower, 33 South Sixth Street, Minneapolis, MN 55402, for defendants.

This matter is before the Court upon defendants' appeal of an Order issued by

FILED 2-10-88

JUDGMENT ENTERED _____

United States Magistrate Floyd E. Boline. By the Order dated December 14, 1987, the Magistrate denied defendants' motion for a temporary stay of discovery and granted plaintiff's motion for leave to depose Prince Rogers Nelson and John Nelson prior to argument on defendants' motion to dismiss Counts I and II of the Complaint.

According to defendants, the discovery plaintiff seeks is unnecessary and unduly burdensome because the information sought is irrelevant to the question whether Count I states a claim upon which relief may be granted and the question whether Count II must be dismissed, if Count I is dismissed, for lack of subject matter jurisdiction. Plaintiff argues that discovery is necessary to respond to defendants' 12(b)(6) motion because discovery will reveal whether defendants

admit or deny use or copying of plaintiff's copyrighted work. With regard to Count II, plaintiff argues that taking the deposition of John Nelson may reveal information enabling plaintiff to amend her Complaint to state a federal cause of action.

The Court is unpersuaded that discovery may be useful in aiding plaintiff in her response to defendants' 12(b)(6) motion and no discovery will be permitted on Count I. Further, defendants are correct in their assertion that the requested discovery is unnecessary to the determination whether federal subject matter jurisdiction exists over Count II. The Court, however, also recognizes that discovery may enable the plaintiff to amend her Complaint to include another federal cause of action, thereby preserving federal jurisdiction. In order to avoid dismissal

will not be permitted any discovery from Prince Rogers Nelson. Argument on defendants' motion to dismiss scheduled for February 26, 1988 at 11:00 a.m. is continued until April 8, 1988 at 11:00 a.m. to accommodate this discovery schedule.

Accordingly, IT IS HEREBY ORDERED that the Magistrate's Order dated December 14, 1987 is affirmed in part as modified and reversed in part.

Dated: February 9, 1988

/s/ David S. Doty

David S. Doty
United States District Court

will not be permitted any discovery from Prince Rogers Nelson. Argument on defendants' motion to dismiss scheduled for February 26, 1988 at 11:00 a.m. is continued until April 8, 1988 at 11:00 a.m. to accommodate this discovery schedule.

Accordingly, IT IS HEREBY ORDERED that the Magistrate's Order dated December 14, 1987 is affirmed in part as modified and reversed in part.

Dated: February 9, 1988

/s/ David S. Doty

David S. Doty
United States District Court

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

| | | |
|---|---|---|
| LORNA L. NELSON, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | Civil Action No. |
| vs. | ) | |
| | ) | 4-87-722 |
| PRN PRODUCTIONS, INC., | ) | |
| PRINCE ROGERS NELSON, | ) | |
| JOHN L. NELSON, and | ) | |
| DUANE J. NELSON, | ) | |
| | ) | |
| Defendants. | ) | |

COMPLAINT

Plaintiff, for her Complaint, states and alleges that:

COUNT I

COPYRIGHT INFRINGEMENT

1. This action arises under the Copyright Laws of the United States, and jurisdiction of this Court is founded on such Laws and on Title 28, United States

Code, § 1338(a). The venue is proper under 28 U.S.C. § 1400(a).

2. Plaintiff, LORNA NELSON, is an individual, residing at 3121 Pillsbury Avenue, Minneapolis, Minnesota 55408.

3. Plaintiff, LORNA NELSON, has created and written several lyrics for adaptation to rock music, including the unpublished work entitled, "WHAT'S COOKING IN THIS BOOK". Dominant recurring expressions in "WHAT'S COOKING IN THIS BOOK" are ". . . TAKE A (ANOTHER) LOOK" and ". . . COOKING IN THIS BOOK".

4. Plaintiff has obtained and is the owner of Copyright Registration No. PAu 908-566 of the unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", and a copy of this work and the Copyright Registration is attached hereto as Exhibit "A".

5. Defendant, PRN PRODUCTIONS, INC., is a corporation, having a principal place of business at 7801 Audubon Road, Chanhassen, Minnesota 55317, and is engaged in the business of manufacturing, producing, and distributing phonograph records featuring PRINCE ROGERS NELSON, an internationally-known rock recording star, performer, vocalist, and writer-composer.

6. Defendant, PRINCE ROGERS NELSON, an individual, is the half-brother of Plaintiff, LORNA NELSON; and, on information and belief, resides at 7801 Audubon Road, Chanhassen, Minnesota 55317, and is the owner of PRN PRODUCTIONS, INC.

7. Defendant, JOHN L. NELSON, an individual, is the father of Plaintiff, LORNA NELSON and Defendants PRINCE NELSON and DUANE NELSON; and, on information

and belief, resides at 7801 Audubon Road, Chanhassen, Minnesota 55317.

8. Defendant, PRINCE NELSON, is a performer, writer, and composer of rock music and is the principal singer featured in record albums and single albums manufactured, produced, and distributed by PRN PRODUCTIONS.

9. Defendant, DUANE J. NELSON, is an individual, residing at 539 Newton Avenue North, Minneapolis, Minnesota, is employed by PRN PRODUCTIONS, and is the brother of LORNA NELSON and the half-brother of PRINCE NELSON.

10. During the years 1982 through the Spring of 1987, DUANE NELSON was a frequent visitor to the residence of Plaintiff; and, during such visits, DUANE NELSON was allowed to casually review and inspect lyrics written and

owned by LORNA NELSON, including lyrics for which Plaintiff had obtained Copyright Registrations and others for which no Copyright Registration had been obtained.

11. On information and belief, DUANE NELSON, without permission of Plaintiff, obtained a copy of Plaintiff's copyrighted unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", and delivered this copy to PRN PRODUCTIONS and PRINCE NELSON.

12. In 1987, PRN PRODUCTIONS and PRINCE NELSON manufactured, produced, and distributed the record album entitled, "SIGN OF THE TIMES", which included the song "U GOT THAT LOOK", consisting of lyrics in which the dominant expressions of refrain are "U GOT THE LOOK" and "COOKING IN MY BOOK". The dominant expressions of refrain in the song "U GOT THAT LOOK" are strikingly similar

to the dominant recurring expressions of Plaintiff's copyrighted unpublished work entitled, "WHAT'S COOKING IN THIS BOOK", and constitute an infringement thereof. This infringement was committed willfully and deliberately. A copy of the album jacket for the album "SIGN OF THE TIMES" is attached hereto as Exhibit "B".

13. Defendants were notified of Plaintiff's Copyright Registration by a letter dated April 10, 1987 to PRN PRODUCTIONS, in which Plaintiff sought to have this matter resolved.

14. Defendants, through their Attorneys, responded in a letter, dated May 29, 1987, denying, in effect, infringement of Plaintiff's copyright by Defendants.

15. Defendant, DUANE NELSON, is among those persons listed on the album entitled, "SIGN OF THE TIMES", credited

to having made a contribution to the album's production; and, on information and belief, the designation credit of DUANE NELSON was as an author or co-author of the song, "U GOT THAT LOOK".

16. On information and belief, Defendants, PRN PRODUCTIONS, INC. and PRINCE NELSON manufactured, produced, and distributed a single record recording on one side thereof entitled, "U GOT THAT LOOK", featuring SHEENA EASTON, an internationally known recording star, and PRINCE NELSON, as vocalists. The manufacture, production, and distribution of this record constitute an infringement of Plasintiff's unpublished copyrighted work entitlted, "WHAT'S COOKING IN THIS BOOK".

17. On information and belief, Defendants, PRN PRODUCTIONS, INC. and

PRINCE NELSON, have manufactured, produced, and distributed a video and a sound track, featuring PRINCE NELSON and SHEENA EASTON, performing "U GOT THAT LOOK". The manufacture, production, and distribution of this video and sound track constitute an infringement of Plaintiff's unpublished copyrighted work entitled, "WHAT'S COOKING IN THIS BOOK".

18. Defendants continue to, and will continue to, infringe Plaintiff's copyright in the unpublished work entitled, WHAT'S COOKING IN THIS BOOK", all to Plaintiff's substantial and irreparable injury and damage, unless enjoined by this Court.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

| | | |
|---|---|---|
| LORNA L. NELSON, Plaintiff, | ) | |
| vs. | ) | Civil Action No. 4-87-722 |
| PRN PRODUCTIONS, INC., PRINCE ROGERS NELSON, JOHN L. NELSON, and DUANE J. NELSON, Defendants. | ) | |

AFFIDAVIT OF LORNA L. NELSON

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

LORNA L. NELSON, being first duly sworn, deposes and says as follows:

1. That she is the Plaintiff in the above-captioned matter and resides at 3121 Pillsbury Avenue, Minneapolis, Minnesota 55408.

2. That she is the author of several unpublished lyrics, including the lyric entitled, "WHAT'S COOKING IN THIS BOOK".

3. That the unpublished lyric, "WHAT'S COOKING IN THIS BOOK", was retained and held in confidence by Affiant at Affiant's residence and was never disclosed to Defendants Prince Rogers Nelson and PRN Productions, Inc., nor did Affiant authorize access to the contents of this lyric to Prince Rogers Nelson and PRN Productions, Inc.

4. That during the years 1958 through 1977, and after Affiant's mother died in 1973, Affiant was involved in the rearing and care of her brother, Defendant Duane J. Nelson. Defendant Duane J. Nelson frequently visited Affiant's residence from 1982 through the Spring of 1987. The purpose of these

frequent visits by Defendant Duane J. Nelson to Affiant's residence was in no way related to Affiant's unpublished lyrics, and, on information and belief, the visits were made as a result of the close familial relationship between Affiant and Defendant Duane J. Nelson.

5. That, on information and belief, Affiant does not believe that Defendant Duane J. Nelson has ever wrtten lyrics for any music, including rock music and rhythm and blues.

6. That Plaintiff's unpublished lyrics, including the lyric, "WHAT'S COOKING IN THIS BOOK", may have been casually examined by Affiant's brother, Defendant Duane J. Nelson, during the course of his frequent visits to Plaintiff's residence from 1982 through the Spring of 1987, but Affiant never

authorized Defendant Duane J. Nelson to use the lyric, "WHAT'S COOKING IN THIS BOOK", in any way, or to remove the lyric from her residence or to disclose the contents of the lyric, "WHAT'S COOKING IN THIS BOOK" to anyone, including Prince Rogers Nelson and PRN Productions, Inc., for any purposes.

7. That Affiant has never authorized access to any of her lyrics, including her unpublished lyric, "WHAT'S COOKING IN THIS BOOK", to anyone, and any such access to the lyric, "WHAT'S COOKING IN THIS BOOK", was without her knowledge and without her permission, and was an illegal appropriation of the contents thereof and constitutes a purloined taking of Affiant's lyric, "WHAT'S COOKING IN THIS BOOK".

8. That Defendant John L. Nelson is the father of Affiant; and during the years 1979 through 1984, Affiant and Defendant John L. Nelson collaborated in the writing of several lyrics, including the lyrics, "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION". In November, 1984, Defendant John L. Nelson advised Affiant in a telephone conversation that he (Defendant John L. Nelson) had executed contracts with Defendants Prince Rogers Nelson and PRN Productions, Inc. with respect to certain lyrics to be embodied in a forthcoming album to be produced by Prince Rogers Nelson and PRN Productions, Inc. On information and belief, Affiant believes that the lyrics involved were "LOVE FOR MONEY" and "TAKING MY MIND ON A VACATION", which

were respectively adapted by Prince Rogers Nelson and PRN Productions, Inc. as "LOVE OR MONEY" and "AROUND THE WORLD IN A DAY". The song "AROUND THE WORLD IN A DAY" is included in the album, "AROUND THE WORLD IN A DAY", and the song "LOVE OR MONEY" is embodied in a single record. On information and belief, Affiant believes Defendant John L. Nelson was compensated by Defendants Prince Rogers Nelson and PRN Productions, Inc. for the production and distribution of the lyrics entitled "AROUND THE WORLD IN A DAY" and "LOVE OR MONEY", pursuant to contracts referred to hereinabove.

Further Affiant sayeth not.

/s/ Lorna L. Nelson

LORNA L. NELSON

Subscribed and sworn to before me

this 25th day of March, 1988.

/s/ Irene M. Cavanagh

---

NOTARY PUBLIC

IRENE M. CAVANAGH

NOTARY PUBLIC MINNESOTA

HENNEPIN COUNTY

My Commission Expires Aug. 11, 1989

PRODUCED, ARRANGED, COMPOSED, ♥ AND

PERFORMED ♥ BY PRINCE

INCLUDES:

SIGN "O" THE TIMES

PLAY IN THE SUNSHINE

BAR

HOUSEQUAKE

GRILL

THE BALLAD OF DOROTHY PARKER

IT

STARFISH AND COFFEE

SLOW LOVE

HOT THING

FOREVER IN MY LIFE

ARCADE

U GOT THE LOOK

IF I WAS YOUR GIRLFRIEND

STRANGE RELATIONSHIP

I COULD NEVER TAKE THE PLACE

OF YOUR MAN

DRUG

THE CROSS

IT'S GONNA BE A BEAUTIFUL NIGHT

ADORE

♥ EXCEPT WHERE INDICATED

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

| | | |
|---|---|---|
| LORNA L. NELSON, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | Civil Action No. |
| v. | ) | |
| | ) | 4-87-722 |
| PRN PRODUCTIONS, INC., | ) | |
| PRINCE ROGERS NELSON, | ) | |
| JOHN L. NELSON, and | ) | |
| DUANE J. NELSON, | ) | |
| | ) | |
| Defendants. | ) | |

AFFIDAVIT OF HERMAN H. BAINS

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

HERMAN H. BAINS, being first duly sworn, deposes and says as follows:

1. That I am an Attorney of record in the above-captioned matter.

2. Billboard magazine is a trade publication for the music and recording

trade and is issued weekly. The publication contains, among other things, various charts showing the relative positions of popular commercial records and albums with respect to sales, radio play lists, airplay, and dance club play lists. One Billboard magazine chart, entitled, "Hot Dance - 12-inch Single Sales", shows the relative sales position of 12-inch single records and is based on retail store sales reports. Two (2) additional Billboard charts, entitled, "Hot Black Singles Sales and Airplay", show the relative sales positions and airplay, respectively, of single records by black artists. Another Billboard magazine chart, entitled, "Hot Black Singles", shows the relative position of single records by black artists, based on samples of retail store and one-stop sales reports and radio play lists.

Another Billboard magazine chart, entitled, "Top Black Albums", illustrates the relative position of albums by black artists and is based upon information compiled from a national sample of retail and one-stop sales reports. Finally, an additional Billboard chart is entitled, "Hot Crossover 30", and shows the relative position of single records which receive airplay in more than one market. Enclosed herewith as "EXHIBIT A" is the cover from the Billboard magazine issued September 26, 1987 and certain pages therefrom illustrating the above-mentioned charts.

3. On information and belief, Affiant believes that the charts mentioned in Paragraph 2 hereinabove, and the relative positions of the songs and albums listed therein, are accurate and reliable, based upon the listed information

used to prepare the charts.

4. Affiant reviewed the weekly issues of the Billboard magazine for the months March, 1987 through December, 1987, and charted the position of the album, "SIGN 'O' THE TIMES", containing the accused work, "U GOT THE LOOK". Affiant also charted the relative position of the single record for the accused work, "U GOT THE LOOK". The relative position of the accused work, "U GOT THE LOOK", appears in the tables below, which designate the weekly issue date of Billboard magazine and the relative position of the accused work for the charts "Hot Crossover 30", "Hot Black Singles", "Hot Black Single Sales and Airplay", and "Hot Dance 12-inch Single Sales" as follows:

## U GOT THE LOOK

| Hot Crossover 30 | | Hot Black Singles | |
|---|---|---|---|
| Date | Position | Date | Position |
| 8-22-87 | 26 | 8-8-87 | 54 |
| 8-29-87 | 16 | 8-15-87 | 43 |
| 9-5-87 | 13 | 8-22-87 | 32 |
| 9-12-87 | 10 | 8-29-87 | 27 |
| 9-19-87 | 7 | 9-5-87 | 21 |
| 9-26-87 | 3 | 9-12-87 | 14 |
| 10-3-87 | 4 | 9-19-87 | 13 |
| 10-10-87 | 5 | 9-26-87 | 11 |
| 10-17-87 | 5 | 10-3-87 | 15 |
| 10-24-87 | 5 | 10-10-87 | 21 |
| 10-31-87 | 9 | 10-17-87 | 35 |
| 11-7-87 | 9 | 10-24-87 | 73 |
| 11-14-87 | 19 | 10-31-87 | 81 |
| 11-21-87 | 24 | | |

| Hot Black Singles - Sales | | Hot Black Singles - Airplay | |
|---|---|---|---|
| Date | Position | Date | Position |
| 8-29-87 | 38 | 8-15-87 | 36 |
| 9-5-87 | 26 | 8-22-87 | 27 |
| 9-12-87 | 25 | 8-29-87 | 22 |
| 9-19-87 | 19 | 9-5-87 | 17 |
| 9-26-87 | 18 | 9-12-87 | 13 |
| 10-3-87 | 15 | 9-19-87 | 11 |
| 10-10-87 | 16 | 9-26-87 | 10 |
| 10-17-87 | 22 | 10-2-87 | 16 |

Hot Dance Disco

- 12" Single Sales

| Date | Position |
|---|---|
| 9-5-87 | 20 |
| 9-12-87 | 20 |
| 9-19-87 | 21 |
| 9-26-87 | 18 |
| 10-3-87 | 20 |
| 10-10-87 | 23 |
| 10-17-87 | 24 |
| 10-24-87 | 33 |
| 10-31-87 | 39. |

5. The relative position of the album, "SIGN 'O' THE TIMES", containing the accused work, "U GOT THE LOOK", appears in the table below, which designates the weekly issue of Billboard magazine and relative position of the album for the chart, "Top Black Albums", as follows:

## Top Black Albums

| Date | Position | Date | Position |
|---|---|---|---|
| 5-2-87 | 7 | 9-5-87 | 23 |
| 5-9-87 | 5 | 9-12-87 | 21 |
| 5-16-87 | 4 | 9-19-87 | 21 |
| 5-23-87 | 4 | 9-26-87 | 24 |
| 5-30-87 | 4 | 10-3-87 | 27 |
| 6-6-87 | 4 | 10-10-87 | 24 |
| 6-13-87 | 5 | 10-17-87 | 24 |
| 6-20-87 | 8 | 10-24-87 | 23 |
| 6-27-87 | 10 | 10-31-87 | 28 |
| 7-4-87 | 13 | 11-7-87 | 28 |
| 7-11-87 | 15 | 11-14-87 | 31 |
| 7-18-87 | 15 | 11-21-87 | 37 |
| 7-25-87 | 16 | 11-28-87 | 47. |
| 8-1-87 | 15 | | |
| 8-8-87 | 15 | | |
| 8-15-87 | 16 | | |
| 8-22-87 | 17 | | |
| 8-29-87 | 21 | | |

6. The music and recording industry annually recognizes outstanding musicians, recording artists, songwriters, and others by awarding "Grammy Awards". Defendant Prince Rogers Nelson was nominated for two (2) Grammy Awards with respect to the accused work, "U GOT THE LOOK", and was also nominated for a Grammy Award with respect to the album, "SIGN 'O' THE TIMES". On information and belief, Affiant believes that the popularity of the accused work, "U GOT THE LOOK", strongly contributed to the commercial success of the album, "SIGN 'O' THE TIMES".

7. Affiant believes that the tables included herein, and the recognition given by the music and recording industry, clearly show the commercial success and popularity of the accused work,

"U GOT THE LOOK".

Further Affiant sayeth not.

/s/ Herman H. Bains

HERMAN H. BAINS

Subscribed and sworn to before me
this 25th day of March, 1988.

/s/ Irene M. Cavanagh

NOTARY PUBLIC

IRENE M. CAVANAGH
NOTARY PUBLIC MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 11, 1989

Newspaper

BILLBOARD

---

VOLUME 99 NO. 39

THE INTERNATIONAL NEWSWEEKLY OF MUSIC

AND HOME ENTERTAINMENT

September 26, 1987/$3.95 (U.S.),

$5 (CAN.)

---

'Platoon' to Carry Iacocca

Tribute to Vietnam Vets

Definition of Format Eludes Confab

'Wave' Takes NAB By Storm

$89.95 Vid Tag: Business As Usual

Song Contest Names Stars As Judges

'Bad' Grooves On Black Vinyl, Dealers Say

Advertisement:

LIFE'S HARD AND THEN YOU DIE

The Debut Album From IT'S IMMATERIAL

Featuring the Single DRIVING AWAY FROM HOME

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT CROSSOVER 30™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | ARTIST | TITLE |
|---|---|---|---|---|---|
| 1 | 1 | 1 | 9 | LISA LISA & CULT JAM | LOST IN EMOTION |
| 2 | 2 | 4 | 8 | WHITNEY HOUSTON | DIDN'T WE ALMOST HAVE IT ALL |
| 3 | 7 | 10 | 6 | PRINCE | U GOT THE LOOK |

* Only pertinent parts of this Chart have been reproduced.

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 1 | 2 | 4 | 8 | I NEED LOVE | L.L. COOL J |
| 2 | 4 | 6 | 9 | LOST IN EMOTION | LISA LISA & CULT JAM |
| 3 | 7 | 11 | 8 | (YOU'RE PUTTIN') A RUSH ON ME | STEPHANIE MILLS |
| 4 | 5 | 7 | 9 | DIDN'T WE ALMOST HAVE IT ALL | WHITNEY HOUSTON |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 5 | 6 | 8 | 10 | NO ONE IN THE WORLD | ANITA BAKER |
| 6 | 8 | 10 | 11 | HOW SOON WE FORGET | COLONEL ABRAMS |
| 7 | 1 | 2 | 8 | I JUST CAN'T STOP LOVING YOU | MICHAEL JACKSON WITH SIEDAH GARRETT |
| 8 | 3 | 1 | 13 | LOVE IS A HOUSE | FORCE M.D.'S |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 9 | 12 | 17 | 9 | JUST THAT TYPE OF GIRL | MADAME X |
| 10 | 16 | 21 | 9 | WE'VE ONLY JUST BEGUN (THE ROMANCE IS NOT OVER) | GLENN JONES |
| 11 | 13 | 14 | 9 | U GOT THE LOOK | PRINCE |

* Only pertinent portions of this Chart have been reproduced.

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES SALES & AIRPLAY™ SALES

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 1 | 1 | I JUST CAN'T STOP LOVING YOU | MICHAEL JACKSON | 7 |
| 2 | 4 | I NEED LOVE | L.L. COOL J | 1 |
| 3 | 9 | LOST IN EMOTION | LISA LISA & CULT JAM | 2 |
| 4 | 2 | LOVE IS A HOUSE | FORCE M.D.'S | 8 |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES SALES & AIRPLAY™

SALES

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 5 | 3 | CASANOVA | LEVERT | 12 |
| 6 | 5 | DIDN'T WE ALMOST HAVE IT ALL | WHITNEY HOUSTON | 4 |
| 7 | 12 | (YOU"RE PUTTIN') A RUSH ON ME | STEPHANIE MILLS | 3 |
| 8 | 8 | WIPEOUT | FAT BOYS & THE BEACH BOYS | 15 |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES

SALES & AIRPLAY™

SALES

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 9 | 13 | NO ONE IN THE WORLD | ANITA BAKER | 5 |
| 10 | 10 | HOW SOON WE FORGET | COLONEL ABRAMS | 6 |
| 11 | 6 | LOVE POWER | DIONNE WARWICK & JEFFREY OSBORNE | 23 |
| 12 | 16 | CINDERFELLA DANA DANE | DANA DANE | 16 |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES SALES & AIRPLAY™ SALES

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 13 | 11 | MAKING LOVE IN THE RAIN | HERB ALPERT | 21 |
| 14 | 17 | LATELY | SURFACE | 14 |
| 15 | 7 | ONE HEARTBEAT | SMOKEY ROBINSON | 32 |
| 16 | 18 | JUST THAT TYPE OF GIRL | MADAME X | 9 |
| 17 | 14 | TRAMP | SALT-N-PEPA | 29 |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES SALES & AIRPLAY™ SALES

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 18 | 19 | U GOT THE LOOK | PRINCE | 11 |

* Only pertinent portions of this Chart have been reproduced.

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES

SALES & AIRPLAY™

AIRPLAY

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 1 | 4 | LOST IN EMOTION | LISA LISA & CULT JAM | 2 |
| 2 | 6 | (YOU'RE PUTTIN') A RUSH ON ME | STEPHANIE MILLS | 3 |
| 3 | 2 | NO ONE IN THE WORLD | ANITA BAKER | 5 |
| 4 | 3 | I NEED LOVE | L.L. COOL J | 1 |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES

SALES & AIRPLAY™

AIRPLAY

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 5 | 5 | DIDN'T WE ALMOST HAVE IT ALL | WHITNEY HOUSTON | 4 |
| 6 | 9 | JUST THAT TYPE OF GIRL | MADAME X | 9 |
| 7 | 12 | WE'VE ONLY JUST BEGUN | GLENN JONES | 10 |
| 8 | 10 | JUST CALL | SHERRICK | 13 |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT BLACK SINGLES

SALES & AIRPLAY™

AIRPLAY

| THIS WEEK | LAST WEEK | TITLE | ARTIST | HOT BLACK POSITION |
|---|---|---|---|---|
| 9 | 8 | HOW SOON WE FORGET | COLONEL ABRAMS | 6 |
| 10 | 11 | U GOT THE LOOK | PRINCE | 11 |

* Only pertinent portions of this Chart have been reproduced.

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® TOP BLACK ALBUMS™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | ARTIST | TITLE |
|---|---|---|---|---|---|
| 1 | 1 | 1 | 15 | L.L. COOL J | BIGGER & DEFFER |
| 2 | 2 | 2 | 14 | STEPHANIE MILLS | IF I WERE YOUR WOMAN |
| 3 | NEW | | 1 | MICHAEL JACKSON | BAD |
| 4 | 4 | 6 | 6 | LEVERT | THE BIG THROWDOWN |
| 5 | 3 | 4 | 14 | WHITNEY HOUSTON | WHITNEY |
| 6 | 6 | 3 | 18 | THE WHISPERS | JUST GETS BETTER WITH TIME |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® TOP BLACK ALBUMS™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | ARTIST | TITLE |
|---|---|---|---|---|---|
| 7 | 7 | 7 | 6 | ALEXANDER O'NEAL | HEARSAY |
| 8 | 5 | 5 | 16 | THE FAT BOYS | CRUSHIN' |
| 9 | 8 | 8 | 27 | SMOKEY ROBINSON | ONE HEARTBEAT |
| 10 | 10 | 11 | 26 | SALT-N-PEPA | HOT, COOL & VICIOUS |
| 11 | 12 | 12 | 11 | NATALIE COLE | EVER-LASTING |
| 12 | 9 | 9 | 47 | FREDDIE JACKSON | JUST LIKE THE FIRST TIME |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® TOP BLACK ALBUMS™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | ARTIST | TITLE |
|---|---|---|---|---|---|
| 13 | 13 | 17 | 7 | FORCE M.D.'S | TOUCH AND GO |
| 14 | 14 | 16 | 5 | UFTO | LETHAL |
| 15 | 17 | 18 | 5 | DANA DANE | DANA DANE WITH FAME |
| 16 | 11 | 20 | 55 | KENNY G. | DUOTONES |
| 17 | 15 | 15 | 7 | ERIC B. & RAKIM | PAID IN FULL |
| 18 | 19 | 19 | 20 | LISA LISA & CULT JAM | SPANISH FLY |
| 19 | 16 | 14 | 25 | MARVIN SEASE | MARVIN SEASE |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® TOP BLACK ALBUMS™

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | ARTIST | TITLE |
|---|---|---|---|---|---|
| 20 | 18 | 13 | 15 | THE ISLEY BROTHERS | SMOOTH SAILIN' |
| 21 | 22 | 26 | 16 | JONATHAN BUTLER | JONATHAN BUTLER |
| 22 | 20 | 22 | 23 | LILLO THOMAS | LILLO |
| 23 | 23 | 27 | 77 | ANITA BAKER | RAPTURE |
| 24 | 21 | 21 | 22 | PRINCE | SIGN 'O' THE TIMES |

* Only pertinent portions of this Chart have been reproduced.

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT DANCE™

12-INCH SINGLES SALES

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 1 | 1 | 2 | 13 | DREAMIN' (REMIX) | WILL TO POWER |
| 2 | 3 | 6 | 9 | CASANOVA | LEVERT |
| 3 | 2 | 3 | 8 | WHO'S THAT GIRL (REMIX) | MADONNA |
| 4 | 4 | 7 | 9 | FULL CIRCLE (REMIX) | COMPANY B |
| 5 | 5 | 9 | 10 | BE MINE TONIGHT | PROMISE CIRCLE |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT DANCE™

12-INCH SINGLES SALES

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 6 | 6 | 12 | 8 | CATCH ME I'M FALLING (REMIX) | PRETTY POISON |
| 7 | 7 | 8 | 14 | SILENT MORNING (REMIX) | NOEL |
| 8 | 9 | 10 | 10 | WHEN SMOKEY SINGS/ CHICAGO | ABC |
| 9 | 12 | 13 | 8 | I HEARD A RUMOR | BANANARAMA |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT DANCE™

12-INCH SINGLES SALES

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 10 | 14 | 18 | 5 | LOST IN EMOTION (REMIX) | LISA LISA & CULT JAM |
| 11 | 8 | 5 | 14 | STRANGE-LOVE | DEPECHE MODE |
| 12 | 11 | 11 | 10 | HOW SOON WE FORGET | COLONEL ABRAMS |
| 13 | 17 | 21 | 6 | CRAZY LOVE | NANCY MARTINEZ |
| 14 | 19 | 26 | 6 | PARTY YOUR BODY | STEVIE B |

FOR WEEK ENDING SEPTEMBER 26, 1987

BILLBOARD® HOT DANCE™

12-INCH SINGLES SALES

| THIS WEEK | LAST WEEK | 2 WKS AGO | WKS ON CHART | TITLE | ARTIST |
|---|---|---|---|---|---|
| 15 | 18 | 28 | 5 | POUR IT ON (REMIX) | MASON |
| 16 | 20 | 22 | 6 | SECRET AFFAIR (REMIX) | CLAUDJA BARRY |
| 17 | 22 | 25 | 5 | MIND OVER MATTER (REMIX) | E.G. DAILY |
| 18 | 21 | 20 | 6 | U GOT THE LOOK/ HOUSEQUAKE | PRINCE |

* Only pertinent portions of this Chart have been reproduced.

## CERTIFICATE OF COPYRIGHT REGISTRATION

UNITED STATES
COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
(OFFICIAL SEAL)

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

/s/ Register of Copyrights

FORM PA
UNITED STATES
COPYRIGHT OFFICE
REGISTRATION NO.
PAu 908-566
EFFECTIVE DATE
OF REGISTRATION
OCT 20 1986

1 TITLE OF THIS WORK

What's Cooking In This Book

---

PREVIOUS OR ALTERNATIVE TITLES

---

NATURE OF THIS WORK

Collection of Words for Music

---

| 2 a NAME OF AUTHOR | DATES OF BIRTH AND DEATH Year Born | Year Died |
|---|---|---|
| Lorna L. Nelson | 1942 | Dec. 2 |

---

| Was this contribution a "work made for hire"? | AUTHOR'S NATIONALITY OR DOMICILE | WAS THE AUTHOR'S CONTRIBUTION TO THE WORK |
|---|---|---|
| Yes ___ | Citizen of | Anonymous? |
| No x | U.S. | ___ Yes |
| | Domiciled in | ___ No |
| | | Pseudonymous? |
| | | ___ Yes |
| | | ___ No |

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed.

Unpublished Words for Songs

---

b NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Year Born Year Died

---

Was this contribution a "work made for hire"?

Yes ___

No ___

AUTHOR'S NATIONALITY OR DOMICILE

Citizen of _____

Domiciled in _____

WAS THE AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

___ Yes

___ No

Pseudonymous?

___ Yes

___ No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed.

---

| c NAME OF AUTHOR | DATES OF BIRTH AND DEATH<br>Year Born | <br>Year Died |
|---|---|---|

---

| Was this contribution a "work made for hire"? | AUTHOR'S NATIONALITY OR DOMICILE | WAS THE AUTHOR'S CONTRIBUTION TO THE WORK |
|---|---|---|
| Yes ___ | Citizen of _____ | Anonymous? ___ Yes ___ No |
| No ___ | Domiciled in _____ | Pseudonymous? ___ Yes ___ No |

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed.

---

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

_____Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

_____

Month Day Year

_____Nation

---

4

APPLICATION RECEIVED

OCT. 20, 1986

ONE DEPOSIT RECEIVED

OCT. 20, 1986

COPYRIGHT CLAIMANT
Name and address
must be given

LORNA NELSON
3121 PILLSBURY AVE. SO.
MPLS. MINN. 55408

TWO DEPOSITS
RECEIVED

REMITTANCE NO.
AND DATE

TRANSFER

* Refers to
a previous
unrelated
registration.

PAu 908-566

EXAMINED BY FORM PA
HA

CHECKED BY

CORRESPONDENCE
x Yes

___ DEPOSIT ACCOUNT
FUNDS USED

PREVIOUS REGISTRATION Has registration 5 for this work, or for an earlier version of this work, already been made in the Copyright Office?

___ Yes x No

x This is the first published edition of a work previously registered in unpublished form.

___ This is the first application submitted by this author as copyright claimant.

___ This is a changed version of the work, as shown by space 6 of this application.

If your answer is "Yes", give:

Previous Registration No. 535022 *

Year of Registration 1983 *

---

DERIVATIVE WORK OF COMPILATION 6

a. Prexisting Material

b. Material Added to This Work

DEPOSIT ACCOUNT 7

Name Account No.

CORRESPONDENCE Give name and address to which correspondence about this application should be sent.

LORNA L. NELSON

3121 PILLSBURY AVE. SO. APT. 1208

MPLS. MINN. 55408

612

Area Code & Telephone No. 827-2277

CERTIFICATION I, the undersigned, 8

hereby certify that I am the

Check only one

___ author

___ other copyright claimant

_x_ owner of exclusive right(s)

___ authorized agent of

_____

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

_____

Typed or printed name and date

LORNA L. NELSON date Oct. 11, 1986

_____

Handwritten signature (x)

/s/ Lorna L. Nelson

_____

_____

| | | |
|---|---|---|
| MAIL | LORNA L. NELSON | 9 |
| CERTIFI- | 3121 PILLSBURY AVE. SO. | |
| CATE | APT. 1208 | |
| TO | MPLS. MINN. 55408 | |

---

* Only pertinent parts of this form have been reproduced.

PRODUCED, ARRANGED, COMPOSED, ♥ AND

PERFORMED ♥ BY PRINCE

INCLUDES:

SIGN "O" THE TIMES

PLAY IN THE SUNSHINE

BAR

GRILL

HOUSEQUAKE

ROOMS

THE BALLAD OF DOROTHY PARKER

IT

STARFISH AND COFFEE

SLOW LOVE

HOT THING

FOREVER IN MY LIFE

ARCADE

U GOT THE LOOK

IF I WAS YOUR GIRLFRIEND

STRANGE RELATIONSHIP

I COULD NEVER TAKE THE PLACE

OF YOUR MAN

DRUG

THE CROSS

GIRLS

GIRLS

GIRLS

IT'S GONNA BE A BEAUTIFUL NIGHT

ADORE

♥ EXCEPT WHERE INDICATED

U GOT THE LOOK ·

Here We Are Folks ·

The Dream We All Dream Of ·

Boy Versus Girl In The World Series

Of Love ·

Tell Me, Have U Got The Look? ·

Tell Me, Have U Got The Look? ·

U Walked In, I Woke Up ·

I've Never Seen A Pretty Girl ·

Look So Tough, Baby ·

U Got That Look ·

Color U Peach And Black ·

Color Me Takin' Aback ·

Crucial, I Think I Wantcha ·

You've Got The Look, You've Got The Hook ·

U Sho 'Nuf Do Be Cookin' In My Book ·

Your Face Is Jammin' ·

Your Body's Heck-A-Slammin' ·

If Love Is Good, Let's Get 2 Rammin' ·

U Got The Look, U Got The Look ·

U Got The Look ·

U Must'A Took ·

A Whole Hour Just 2 Make Up Your Face,
Baby ·

Closin' Time, Ugly Lights, Everybody's
Inspected ·

But U Are A Natural Beauty Unaffected ·

Did I Say An Hour? ·

My Face Is Red ·

I Stand Corrected ·

You've Got The Look, You've Got The Look ·

U Sho 'Nuf Do Be Cookin' In My Book ·

Your Face Is Jammin' ·

You're Body's Heck-A-Slammin' ·

If Love Is Good, Let's Get 2 Rammin' ·

U Got The Look, U Got The Look ·

Well, Here We Are, Ladies And Gentlemen ·

The Dream We All Dream Of ·

Boy Versus Girl In the World Series
of Love ·

Slammin' ·

U Walked In ·

I Woke Up ·

I Never Seen Such A Pretty Girl
Look So Tough, Baby ·

U Got That Look, Yes You Do ·

Color U Peach And Black ·

Color Me Takin' Aback, Baby ·

Crucial, I Think I Wantcha ·

Vocals by Sheena Easton & Camille

Drums & Percussion by Sheila E.

---

* Only pertinent parts of the album record jacket have been reproduced.